Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2006 Quadrennial Regulatory Review –	)	MB Docket No. 06-121
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	
	)	MB Docket No. 02-277
2002 Biennial Regulatory Review –	)	
Review of the Commission's Broadcast	)	
Ownership Rules and Other Rules	)	
Adopted Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	MM Docket No. 01-235
	)	
Cross-Ownership of Broadcast Stations	)	
and Newspapers	)	MM Docket No. 01-317
	)	
Rules and Policies Concerning Multiple	)	
Ownership of Radio Broadcast Stations	)	
in Local Markets	)	MM Docket No. 00-244
Definition of Radio Markets		

COMMENTS

of

THE AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS

I. INTRODUCTION AND SUMMARY

1. These comments are submitted on behalf of the American Federation of Television and Radio Artists, AFL-CIO ("AFTRA"). AFTRA is a national labor organization with a membership of over 70,000 professional employees working in the news and broadcast, entertainment, advertising and sound recordings industries. On behalf of its members, AFTRA submits these comments in response to the Commission's Further Notice of Proposed Rule Making, MB Docket No. 06-121, MB Docket No. 02-277, MM Docket No. 01-235, MM Docket No. 01-317 and MM Docket No. 00-244, (hereinafter "Notice") initiating a comprehensive review of the remaining media ownership rules, and seeking comment on the implications and ramifications of the United States Court of Appeals for the Third Circuit's decision in *Prometheus Radio Project, et al. v. F.C.C.*, 373 F.3d 372 (2004) ("*Prometheus*"), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004), *cert. denied,* 73 U.S.L.W. 3466 (U.S. June 13, 2005) (Nos. 04-1020, 04-1033, 04-1036, 04-1045, 04-1168, and 04-1177).

2. AFTRA's membership includes news reporters, anchors, sportscasters, talk show hosts, announcers, disc jockeys, producers, writers and other on-air and off-air broadcast employees who work at networks and in stations in markets of varying size throughout the United States. In addition, AFTRA represents royalty artists and background singers whose sound recordings are played on radio stations. Finally, AFTRA's

membership includes actors, singers and other performers on dramatic programs, game shows, talk and variety shows and other entertainment television programming, including scripted entertainment programs and commercials, which are broadcast on over-the-air television and radio in the United States.

3. Entities that employ AFTRA broadcast members include the four major broadcast networks (ABC, CBS, FOX and NBC), newly emerging television networks such as the CW Network and My Network TV broadcast networks, and Spanish language television networks Telemundo and Univision. In addition to working for the networks, AFTRA members also work at the networks' owned and operated stations, as well as local radio and television stations owned by over 40 independent and group owners. AFTRA's members are employed by all major record labels, as well as by advertising agencies and television producers. AFTRA maintains several hundred collective bargaining agreements with these employers nationwide.

4. AFTRA has previously filed comments with the Commission in the matters of MM Docket Nos. 98-35, 98-37, 91-221 and 94-322, relating to the national television ownership rule, the local radio ownership rule, and the effects of consolidation in the broadcast industry since the passage of the Telecommunications Act of 1996 (the "Telecom Act"). Additionally, AFTRA filed comments in conjunction with the Writers Guild of America, East in MB

Docket No. 02-277 and MM Docket Nos. 01-235, 01-317 and 00-244, in the most recent review of these regulations.

5. AFTRA has a uniquely "inside" view of the urgent need to maintain the remaining broadcast ownership rules because AFTRA represents those professionals who work in the newsrooms and on the programming that have been and will continue to be hurt by further media consolidation.

6. Based on the first hand experience of its members as well as the available empirical data, AFTRA submits that it is necessary and appropriate for the Commission to strengthen the remaining broadcast ownership rules in order to protect diversity and localism in the news and information available to the general public, to protect against anti-competitive business practices, and to prevent any further erosion of innovation in media programming.

II. VIEWPOINT DIVERSITY, LOCALISM AND COMPETITION SHOULD CONTINUE TO GUIDE THE COMMISSION'S ESTABLISHMENT OF RULES GOVERNING MEDIA OWNERSHIP.

7. As the Commission has long maintained, and the courts have confirmed, the promotion of viewpoint diversity, localism and competition are all proper components of the Commission's mission to promote the public interest.[1] The media is the lifeblood of American democracy and culture, and a media marketplace that delivers the "widest possible dissemination of information from diverse and antagonistic sources" should serve local

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[1] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1042 (D.C. Cir. 2002); Sinclair Broadcasting Group v. FCC, 284 F.3d 148, 160 (D.C. Cir. 2002).

communities.[2] Furthermore, as the courts have also confirmed, ownership limits are a rational and constitutional method of ensuring editorial and viewpoint diversity.[3]

8. Courts have also validated the Commission's emphasis on preserving local program content in crafting rules. "Local program service is a vital part of community life. A station should be ready, able and willing to serve the needs of the local community."[4] Though the Commission identifies "localism" as a valid regulatory goal, it questions whether rules governing ownership are necessary to promote localism.[5]

9. The Commission has determined that certain of its rules do not further the policy objective of viewpoint diversity, finding that there is an "abundance of diversity" in "most local markets". [6] This determination is fundamentally flawed. We are pleased and encouraged that the Commission is committed to preserving the public's access to diverse viewpoints in the media, but we contend that the weakening of ownership limitations thus far has resulted in fewer diverse viewpoints. Principally, this erosion of

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[2] *Turner Broadcasting System, Inc v. FCC*, 51 U.S. 622, 663-64. (1994)

[3] *Metro Broadcasting, Inc. v. FCC*, 547 571 n. 16 (1990), *overruled on other grounds, Adarand Constructors, Inc. v. Pena*, 515 U.S. 200 (1995); NCCB, 436 U.S. at 796-97.

[4] *NBC v. United States*, 319 U.S. 190, 203 (1943), *quoted in Prometheus*, 373 F3d at 149.

[5] Notice ¶ 7.

[6] Notice ¶ 12, citing *2002 Biennial Review Order,* 18 FCC Rcd at 13686 ¶ 171. *See also* Notice ¶¶ 15, 24.

viewpoint diversity is directly related to the Commission's failure to consider outlet and source diversity as proxies for viewpoint diversity.

10. The experience of employees working in digital media--whether in the recording industry, radio broadcasting, scripted entertainment programming, or broadcast journalism--tells a striking story: without <u>source</u> diversity, owners of media seek to achieve economies of scale by recycling, re-using and re-purposing existing content (and the viewpoints contained therein) across all commonly-owned platforms and distribution mechanisms. Source diversity, meaning independent ownership of media outlets, is critical to maintain viewpoint diversity. Any assessment that there is an "abundance of diversity" ignores the critical need for source diversity in order to foster viewpoint diversity. In this submission, we provide numerous examples of situations where the elimination of source diversity has destroyed viewpoint diversity.

III. THE EMERGENCE OF "NEW MEDIA" REQUIRES MAINTENANCE OF MEANINGFUL OWNERSHIP REGULATIONS IN ORDER TO FURTHER DIVERSITY, COMPETITION AND LOCALISM.

A. Alarming Media Consolidation Continues to Occur in a Media Landscape that Includes Digital Video Recorders, Internet Content, and Music and Video Downloads.

11. The Commission seeks comment on the impact of new technologies and delivery platforms on media consumption and ownership issues. Notice ¶10. Specifically, the Commission inquires about "digital video recorders, video-on-demand and the availability of television and radio product on the Internet." *Id.* Although these technologies are more recent than broadcast radio and television, they are hardly new. Music and video has been downloadable from the Internet for many years. The first iPod was unveiled by Apple Computers several years ago[7], and other MP3 players and CD burners were widely commercially available in personal home computers years before that. In fact, this technology has so firmly established itself in international consumer culture that original iPod designs have been exhibited at MoMA, the Museum of Modern Art, in New York and the Pompidou in Paris. Similarly, digital video recorders ("DVRs"), DVD burners and related technology are currently widely commercially available to consumers, and have been for years. Members of AFTRA and the Screen

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[7] Coincidentally, the filing deadline for these comments, October 23, is also the fifth anniversary of the release of the iPod. Grace Wong, "Apple's iPod Turning Five",

Actors Guild engaged in a nation-wide strike in 2000—the longest strike in those unions' histories over the terms for new commercial contracts, covering TV and radio commercial work, where a primary issue in negotiations was the streaming of commercials on the Internet. Simply put, if the Commission is looking to Internet programming, digital downloads and digital video recorders when it speaks of "new technologies", the Commission is already several years behind the industry and the public.

12. Although any overview of the current media landscape must contemplate that iPods and DVRs are already an ingrained part of the media landscape, many Americans still do not utilize these technologies. Poor communities, rural communities and certain minority communities continue to rely exclusively on traditional media—newspapers and over-the-air radio and television broadcasting—for their news, information and entertainment. Still, the examples of consolidation and its by-products, which we cite herein, all represent situations where DVRs, digital downloads and the Internet are all available to consumers. If media consolidation has resulted in the erosion of independent editorial comments, fewer sources of news and information, and less diversity and competition, the wide availability of these technologies has not stopped that from happening thus far.

B. The Commission's Rules Must Contemplate the Impact of Split-Stream Digital Multicasting in Crafting Ownership Rules.

CNNMoney.com, October 20, 2006 (available at http://money.cnn.com/2006/10/20/technology/apple_ipod/).

13. AFTRA submits that there are other technologies that are, in fact, emerging at this time and that the Commission's rules must be crafted to anticipate these truly new and emergent technologies. Chief among these emerging technologies is split-stream digital multicasting. Radio and television broadcasters are currently developing business plans to split their digital broadcast signals into multiple program streams. It has just started, but it is already happening.

14. Although the consumer technology to receive split stream multicasts is not widely available at this time, NBC has begun broadcasting NBC Weather Plus, a 24-hour digital over-the-air weather network, on a portion of its digital bandwidth. This new over-the-air network is a joint venture between NBC and its affiliate group, and it is currently airing on NBC owned-and-operated stations, as well as other group-owned stations.[8]

15. Similarly, in radio, the largest group owner of radio stations in the United States, Clear Channel Communications, has announced a business plan to split its digital spectrum into multiple program streams.[9] According to Clear Channel, in the first 28 markets alone, the company has launched 264 entirely new channels of radio programming over the air.[10] Because they are using the additional digital bandwidth to broadcast these

[8] Press Release, "NBC Affilliates Launch the First All-Digital Broadcast Network: NBC Weather Plus" (available at http://www.nbcunicable.com/insidenbccable/networks/weather/resources/inthenews/111504.html)

[9] Press Release, "New HD2 Multicast Programming is Imminent", January 18, 2006) (available at http://www.clearchannel.com/Radio/PressRelease.aspx?PressReleaseID=1500)

[10] *Id.*

channels, no additional licenses have been obtained for the operation of these broadcast channels.

16. AFTRA is engaged in collective bargaining negotiations with several other networks and large group owners about their plans to engage in over-the-air split stream digital multicasting. AFTRA has met with ABC television and CBS radio to discuss the terms and conditions of employment for union members who appear on secondary, tertiary and other supplemental program streams. In essence, every major broadcast owner in the industry is jumping on the split stream multicast bandwagon. Industry employers are lobbying for "must-carry" regulations for carriage of their supplemental program streams on cable systems. The level of these companies' investment in these supplemental program streams creates the impression that there will soon be readily available consumer technology to allow audiences to receive this programming.

17. In considering new and emergent technologies, it is imperative that the Commission consider the fact that media owners are using split-stream digital multicasting to broadcast new and additional channels, even where existing ownership rules do not permit them to obtain licenses for new stations.

C. Because New and Emerging Distribution Mechanisms are Controlled by the Same Oligarchy of Corporate Interests, They Cannot Be Viewed as Distinct Voices.

18. All available evidence indicates that new and emerging technologies represent limited market shares, and that they cannot be viewed as distinct voices in the marketplace, because they are largely owned and controlled by the same large media conglomerates that control radio, television and newspapers.

19. A local cable news network or Internet site is not a different voice when it is, in fact, owned and its content is provided by the local newspaper or TV station. In Chicago, where Tribune Company owns a local cable news station, CLTV, that cable station shares resources with other Tribune-owned properties. The CLTV website, for example links to a broad range of "partners"—the Chicago Tribune Newspaper, the Chicago Cubs major league baseball team, the Metromix (a local dining and entertainment listing) website, the Red Eye newspaper, WGN Radio, and broadcast television station WGN. CLTV has "synergized" its content, providing video content to Metromix, and branding certain of its content as "Metromix on CLTV." The Chicago Tribune, WGN-TV and Metromix share a restaurant critic. WGN-TV has negotiated with AFTRA to permit certain of its on-air journalists to re-purpose their stories for the Chicago Tribune newspaper. And the video content that is available on the CLTV and WGN-TV websites is identical to content that has already been broadcast over-the-air or on cable in Chicago.

20. In the Pacific Northwest, Belo owns a number of over-the-air broadcast stations, as well as a regional cable news network, NWCN. Belo re-uses material from its over-the-air broadcast stations on its regional cable network. News stories from KING-TV and KONG-TV in Seattle, KGW-TV in Portland, KREM-TV and KSKN-TV in Spokane, and KTVB-TV in Boise appear on NWCN's cable broadcasts and on the NWCN website, in substantially the same form that they were broadcast over-the-air on their originating stations.

21. On Apple's iTunes Music Store, one of the largest commercial distributors of digital pay-per-download video programs, the programming for sale is or has been, without exception, available on over-the-air broadcast or cable television. Many of these programs have also been released on DVD, where a complete season of a television series has been made available for purchase or rental by consumers. The feature films for sale in download formula have all been exhibited in theaters, or on cable or broadcast television. With the exception of a very few customized downloads offered for free (generally to acquaint consumers with an unfamiliar series), there is no original video content on iTunes whatsoever.

22. Even to the extent that new and emerging technologies provide consumers with additional methods of viewing and listening to new content, that content remains available to consumers through other channels. Where companies own newspapers, Internet sites, broadcast stations and cable

networks, the content on those commonly-owned platforms is identical. Where companies have the opportunity to distribute content through new delivery mechanisms (such as through digital downloads), the content that they distributed is recycled, reformatted and re-purposed from another distribution platform. Simply put, new and emerging technologies do not provide source or viewpoint diversity to consumers.

IV. CONSIDERATIONS OF DIVERSITY, LOCALISM AND COMPETITION REQUIRE THAT EXISTING MEDIA OWNERSHIP REGULATIONS BE MAINTAINED AND STRENGTHENED.

23. The remaining media ownership rules—namely the local television multiple ownership rule, the radio television cross-ownership rule, the newspaper/broadcast cross-ownership rule and the remaining local radio caps--are essential tools for protecting the availability of diverse editorial perspectives and entertainment programs to local communities.

24. As we will illustrate, herein, when media owners acquire additional properties in a local marketplace, they seek to reduce operating expenses by combining existing news operations, or finding scalable programming to use across their multiple platforms. By achieving economies of scale or "synergies" between their commonly owned ventures, local communities are deprived of diverse sources of news and entertainment. As we illustrated, *supra*, in the discussion of news media, media conglomerates reuse, recycle and repurpose the same editorial content to be broadcast on all of their radio and television stations, to print in their newspapers and to post

on their Internet websites. This content is often identical, produced by the same assignment desk, the same general manager, the same physical facility, the same news or program director, and/or the same playlist, and essentially, it represents one single uniform viewpoint.

A. A Local Television Rule That Permits Duopolies and Triopolies Destroys Diversity, Localism and Competition.

25. Where television duopolies and triopolies have been created, local audiences are deprived of access to diverse editorial perspectives in news. In cases where one company owns multiple television stations, the same local content is broadcast on each of the stations with little, if any variation. While this may enable local stations to provide local content in a cost-efficient manner because of the synergies, it runs counter to the important goals of promoting competition and viewpoint diversity.

26. As an example, Nextar Broadcasting owns a television duopoly in Champaign/Springfield, Illinois. WCIA-TV is a CBS affiliate and WCFN is a My Network TV affilliate.[11] The local news content aired on these stations is virtually identical, with the same on-air staff. Only the branding is different. While this arrangement may be very beneficial for Nextar's bottom line, it is hardly in the public interest. Common ownership of multiple stations in the same market creates an economic disincentive for station owners to compete against themselves by putting different programming on the air. To staff a second or third station, with an

[11] This market has a second duopoly with a different owner, Sinclair.

independent editorial perspective, Nextar would have to build and maintain a second, very expensive news operation. Absent an affirmative obligation to serve the public interest goals of diversity and competition, it is not surprising that Nextar has abandoned that obligation in Champaign/Springfield and the other markets where it has a duopoly.

27. Similarly, in Los Angeles, where CBS has a duopoly with KCBS and KCAL, content is shared between the two stations. In fact, on the KCBS website, CBS trumpets its "KCBS 2 – KCAL 9 News Team."[12] In markets of varying sizes, the situation is the same. When duopolies exist, media conglomerates cut costs, operate one newsroom, and provide substantially the same local content on both stations' signals.

28. The Commission correctly recognizes that restrictions on local television ownership are necessary for competition. Notice ¶ 12. However, the absence of meaningful restrictions on local television ownership has already destroyed diversity of opinion and editorial perspective in news, where duopolies and triopolies exist. The Commission has invited comment on whether the limits on television ownership rules should be revised. AFTRA submits that the current degree of ownership consolidation and the resulting erosion of diversity and competition require stricter limits on the number of television stations that a given entity can own in any market.

B. Stricter Rules Governing Radio Station Ownership are Necessary to Protect the Public Interest.

[12] Available at http://cbs2.com/bios.

29. The accelerated pace of deregulation in the radio industry has already diminished the diversity of music available in local markets. It has damaged the quality of radio programming nationwide, and has fueled anti-competitive practices in the industry. It is largely undisputed that the elimination of the national radio station ownership cap has resulted in a massive consolidation of radio properties nationwide, and a concurrent slowing in the growth rate of stations in local markets.

30. Consolidation of radio station ownership is principally responsible for the disappearance of news on over-the-air broadcast radio. In Chicago, Westinghouse-owned WMAQ-AM had been an all-news radio station since 1989. It competed directly with Infinity-owned WBBM-AM, the other all-news radio station in that market, owned by Infinity. Westinghouse eventually bought CBS and its radio division, Infinity. In 2000, Infinity (currently operating as CBS Radio), determined that it no longer wished to operate two competing radio news stations, and determined to shut down WMAQ-AM in 2000. Because WMAQ-AM and WBBM-AM were the only two news radio stations at that time in Chicago, when the corporate owners of those stations killed WMAQ, they were eliminating WBBM's only competition, and leaving the third largest media market in the United States with only one all-news radio station. That situation has continued in Chicago since 2000, until recently, when WBEZ-FM, a public radio station, indicated that it would move to a 24-hour news and public affairs format.

31. Unfortunately, WBEZ's decision to contribute more news on radio to the Chicago market meant that Chicago was losing its only jazz music format station. WBEZ had been one of the few stations in the country to broadcast traditional jazz programming. Jazz is not available over-the-air in Chicago anymore. WBEZ's programming change illustrates another unfortunate by-product of radio deregulation: the disappearance of entire formats from the radio dial. Consolidation of radio ownership has resulted in fewer and narrower radio formats, with narrower playlists.

32. A 2002 study by the Future of Music Coalition found that there was considerable overlap between songs appearing on playlists of supposedly distinct formats, sometimes by as much as 76%.[13] Since that study was conducted, playlists have continued to narrow and certain formats continue to disappear.

33. In August 2006, radio audiences in Los Angeles lost the last remaining country music format radio station. KZLA-FM, which had billed itself as "America's most listened-to country station," changed its format for the first time in 25 years -- to a pop format focusing on beat-heavy R&B and dance tunes. This format change was hardly responsive to audiences. Country music singers Tim McGraw and Faith Hill had sold out three shows in the mammoth Staples Center the same week that KZLA changed its

[13] Peter DiCola and Kristin Thompson, "Radio Deregulation: Has it Served Citizens and Musicians?", November 18, 2002, p. 57 (available at http://www.futureofmusic.org/images/fmcradiostudy.pdf).

format. Country music radio stations have also disappeared in other markets, including New York City—a market with substantial fan support for country music, as evidenced by the industry's decision to move the Country Music Awards from Nashville to New York City in 2005.[14]

34. Consolidation of radio station ownership has had a direct effect on independent recording artists' ability to get airplay on the radio stations in the communities where they live and work. In response to an inquiry from AFTRA to its members, one recording artist provided this story:

> Two years ago I had a song on country radio that was becoming a national hit. In the old days, I could call the local station and tell them about my song and, being a local myself, they would often add my song to the playlist. On this last song, however, I was told that all songs were now being programmed from out of state and they could no longer add local material. This is consolidation gone terribly wrong.[15]

Stories like these illustrate the problem with consolidation in radio. Artists are prevented from developing and getting airplay, and audience are deprived of hearing local music acts.

35. Radio consolidation also leads to practices like voice-tracking and automation in music radio. Voice-tracking is the customized, remote pre-recording of entire radio air shifts. The liners, tags, announcements and listener calls are pre-recorded in a studio in a remote location, and music is spliced into the program at a later time. The voice-tracked programs are

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[14] "New York to Host Country Awards", *BBC News*, November 15, 2005. (available at http://news.bbc.co.uk/1/hi/entertainment/music/4437982.stm).

[15] Testimony of John Connolly, FCC Public Hearing on Media Consolidation, University of Southern California, October 3, 2006.

then sent to a radio station in a distant market and are aired by that station as though they are live and local, when in reality, they are neither.

36. Though voice-tracking was originally pioneered by Clear Channel Communications, in order to save money when programming their rapidly expanding radio empire, other group owners are jumping on the voice-tracking bandwagon. In collective bargaining negotiations with AFTRA in markets around the country, CBS Radio has made aggressive proposals to permit it to assign radio disc jockeys to voice-track and to import voice-tracked programming into its stations without restriction. It is axiomatic that local communities are not well-served by radio programs that purport to have a community connection, when none exists.

37. Radio consolidation has also given rise to automated or "jockless" formats. In June of 2003, WCBS-FM, which had long served as the "oldies" station in New York City, switched to a "jockless" format ("Jack FM") without any prior warning. Several veteran radio announcers, who have been institutions in the New York broadcasting community, were fired from WCBS-FM, without warning. Not coincidentally, on the same day, another oldies format radio station, WJMK-FM in Chicago changed to the identical "jockless" ("Jack FM") format. Both stations are owned by CBS Radio. In New York and Chicago, there was substantial outcry from listeners, who lamented the demise of their stations. Ratings at WCBS-FM have been substantially lower than under the prior format. As this example

illustrates, giant media conglomerates are more than willing to sacrifice local content in the interest of cost-cutting. Local communities are not well served by consolidation. Instead of radio that is responsive to the local community, they have been given bland, cookie-cutter radio formats that are often completely automated.

38. Ownership rules have historically protected the public interest. Further relaxation of the Local Radio Station Ownership Rule would continue to erode localism, competition and diversity, and would violate the Commission's mandate to protect the public interest.

C. The Commission Should Retain the Cross-Ownership Rules.

(1) The Newspaper-Broadcast Cross-Ownership Rule is Necessary to Promote Diversity, Competition and Localism.

39. In its 1978 decision upholding the newspaper-broadcast cross-ownership rule, the Supreme Court noted that, "it is unrealistic to expect true diversity from a commonly-owned station-newspaper combination. The divergency of their viewpoints cannot be expected to be the same as if they were antagonistically run."[16] Though the *Prometheus* Court found a rational basis for upholding the Commission's abolition of the newspaper-broadcast cross-ownership restriction,[17] AFTRA respectfully submits that the Supreme Court's rationale in 1978 still holds true today. Examples from

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[16] *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 777-79 (1978)

[17] 373 F.3d at 398-390.

"grandfathered" cross-owned properties illustrate that diversity, competition and localism are not well served by cross-ownership of newspapers and broadcast stations.

40. Newspapers and television newscasts serve unique roles for the American public. Newspapers provide in-depth reporting and analysis; they are the only media whose primary focus is news, not entertainment. Television dominates in political news and political advertising, provides breaking news and conveys the immediacy and emotional impact of its visual images. As was true fifty years ago, most Americans still get their local news and information from their daily newspaper, and one of a small handful of broadcast stations.

41. Preserving the prohibition against the common ownership of newspapers and television stations in local markets is critical for maintaining diversity in the delivery of local news to the public, not only because of the uniquely important role these media outlets play in the delivery of news to the public, but also because: (i) there are already few voices in local markets for these outlets; (ii) the public does not receive diverse viewpoints through other media; (iii) media conglomerates will combine news operations to save costs; and (iv) media conglomerates will impose homogenous editorial views on commonly-owned properties.

42. The co-ownership of a local newspaper and broadcast station puts diversity at risk because of the well-documented tendencies of media

conglomerates to reduce costs and promote "synergies" by combining news staff and resources at the expense of independence and diversity of viewpoint. As discussed, *infra*, the Tribune Company in Chicago seeks to achieve these economies of scale by sharing resources and duplicating content across its broadcast properties, newspapers and cable networks. Tribune's contribution to the sharp decline of diverse viewpoints is not limited to Chicago, however. In New York, print journalists employed by Tribune's newspaper Newsday regularly appear on the television station it owns, WPIX-TV. Tribune has "synergized" the Los Angeles Times and broadcast station KTLA-TV, as well.[18] The newspaper-broadcast cross-ownership restriction is a critical regulatory tool that protects against the domination of American media by any single corporate interest.

(2) Radio-Television Cross-Ownership Restrictions Support Viewpoint Diversity on Radio and Television.

43. The Commission should retain and strengthen limits on cross-ownership of radio and television stations. When media companies are permitted to own radio and television stations in the same market, they invariably cross-assign employees among those properties, in order to further "synergize" their properties.

44. In collective bargaining negotiations around the country, AFTRA representatives have been confronted with proposals in collective

[18] Claudia Peschiutta, "KTLA, Times Employees Acting More Like a Family" , *Los Angeles Business Journal*, (May 6, 2002) (available at http://www.findarticles.com/p/articles/mi_m5072/is_18_24/ai_91091713).

bargaining negotiations where media employers seek to assign their television reporters to file stories for the radio stations they own. Furthermore, television meteorologists are asked to feed weather reports to radio stations. Just as media companies seek to eliminate independent content when they have duopolies or triopolies in television, the cross-ownership of radio and television stations provides an economic disincentive to provide truly independent editorial content.

D. The Dual Network Rule is Necessary to Provide Diversity of News, Information and Entertainment Programming.

45. The Commission seeks comment on whether the dual network rule remains necessary in the public interest as a result of competition. The weakening of the dual network rule has permitted consolidation of network news and entertainment programming between NBC and Telemundo, CBS and CW, and Fox and My Network TV. Under existing network duopolies, independent news content has disappeared, and the production arms of media conglomerates have further suffocated the independent producers with which they would otherwise compete.

46. When NBC purchased Telemundo in 2001, Telemundo had been operating an independent network newscast. Just this week, in an ongoing drive to synergize and cut costs, it was announced that Telemundo would dissolve local news bureaus in San Jose, Phoenix, Houston, San Antonio, Denver and Dallas, and replace it with a single production center for Spanish language news in Dallas. In other markets, like New York and Los Angeles, local Telemundo operations will be moved into facilities with NBC's local owned and operated stations, and NBC's commonly-owned cable networks, MSNBC and CNBC. News resources have already been shared in a number of markets, like Chicago, where WMAQ (NBC) journalists and WSNS

(Telemundo) journalists already work from the same assignment desks, share footage and camera crews and have adjoining sets in the same studio.[19]

47. Because Telemundo is not one of the "top four" networks, the dual network rule does not apply to it. It is axiomatic, however, that the common ownership of NBC and Telemundo networks is directly responsible for the elimination of independent content, viewpoint and editorial perspective on Telemundo. The language may be different, but content is all-too-often the same.

48. Similarly, the dual network rule is related to the death of independent entertainment production. AFTRA has filed comments separately in conjunction with the Screen Actors Guild, the Directors Guild of America, and the Producers Guild of America on the need for regulations governing independent production requirements in prime-time broadcast programming. We refer the Commission to that separate filing for purposes of our specific recommendations in that regard. In addition, however, we submit that the dual network rule must be strengthened in order to loosen the stranglehold that the dominant entertainment producers have over their content.

49. Television entertainment programming holds a distinct and vital place in reflecting and nurturing American culture and democracy. Twenty years ago, there were over twenty different independent producers,

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[19] "NBC U: More with Less", *Broadcasting and Cable*, October 23,2006 (available at http://www.broadcastingcable.com/article/CA6383679.html)

which sold programs to competing broadcast networks. Now, the media conglomerates that own the networks also own their own production facilities and the few remaining independent content producers are struggling to survive.

50. Networks will distribute the programming produced by their own subsidiaries, even if it is inferior in quality to other available product. There is no incentive for innovative programming. This situation becomes worse without a meaningful rule permitting television networks to be commonly owned.

V. ADDITIONAL RULES AND OVERSIGHT ARE NECESSARY IN ORDER TO PROMOTE DIVERSITY, COMPETITION AND LOCALISM.

51. The Commission has solicited comments on whether alternate regulatory schemes or rules would better serve the regulatory goals of localism, diversity and competition. AFTRA respectfully submits that additional oversight is necessary in order to further these goals.

52. AFTRA has already illustrated, *supra*, the need for the Commission to determine how the advent of split stream digital multicasting in radio and television will further erode localism, diversity and competition. This new technology clearly warrants additional study and clarification on how those media companies employing that technology fit with the Commission's regulatory scheme.

A. The Commission Must Consider the Impact of Local Marketing Agreements and Other Contractual Arrangements when Evaluating its Rules.

53. The Commission's has failed to oversee the administration of Local Marketing Agreements ("LMAs"), and other contractual arrangements by which media conglomerates operate stations, but do not hold the station's license, such as time brokerage agreements, shared services agreements, joint sales agreements and outsourcing agreements. In many cases, these arrangements permit stations to be operated in contravention of the Commission's rules governing ownership of media properties. Though

companies that operate stations through LMAs and other contractual relationships may not hold a license to broadcast, they have apparently been given a license to consolidate, by virtue of the Commission's turning of a blind eye to these arrangements.

54. Sinclair Broadcast Group, Inc. owns and/or operates 58 television stations. However, these 58 stations exist in only 36 media markets. In some of those markets, Sinclair actually owns and operates both stations where it has a duopoly. In other markets, however, Sinclair operates a second or third station under an LMA, an outsourcing agreement, or other contractual arrangement. It should not come as a surprise, then, that Sinclair, as a rule, does not provide different and independent local content on the stations that it operates under LMAs. Other broadcasters, including Nextar, discussed *supra*, also operate stations they do not (or are not permitted to) own through these contractual arrangements. Again, independent and distinct local content is not provided on each station.

55. At WILD-FM in Boston, an LMA was used to disenfranchise the African-American community of a powerful local voice in broadcast radio. For many years, WILD-FM had served listeners in Boston with community-responsive programming. Until August of this year, WILD-FM was owned and operated by Radio One. In anticipation of approval of a pending sale, Radio One transferred operation of WILD-FM to Entercom through a time brokerage agreement. Entercom laid off all of the employees, and is using

the signal of WILD-FM to air a simulcast of one of the other five stations it already owns in that market.[20] An important community voice for the African-American community in Boston has been destroyed because of consolidation. At this point, even if the FCC were to deny the formal sale of WILD-FM to Entercom, the damage has already been done. The time brokerage agreement allowed Entercom to destroy the station, absent a formal sale.

B. Ownership Caps and Cross-Ownership Limits Promote the Interests of Minority Communities.

56. Examples provided, *supra*, relating to Telemundo and WILD-FM illustrate the dangers of media consolidation for minority communities. Large media conglomerates own the vast majority of media outlets in this country. These media conglomerates have a proven track record of disenfranchising local minority communities. They have demonstrated a clear preference to replace independent programming of local origination with syndicated, recycled, reformatted and repurposed programming that ignores the priorties of minority communities.

57. The Commission has inquired into the proposals to increase minority media ownership that have been submitted by the Minority Media Telecommunications Council. AFTRA has signed on to comments and proposals filed by the MMTC in prior filings with the Commission, and we

[20] Adrienne P. Samuels, "Fans Say WILD Sound Should Not Be Silenced." *Boston Globe* October 10, 2006 (available at

wish to reiterate our support for these proposals as meaningful efforts to increase participation by minority owners in our media landscape.

VI. FURTHER INQUIRY AND STUDY IS NECESSARY BEFORE ANY REVISIONS TO EXISTING OWNERSHIP RULES ARE IMPLEMENTED.

58. In light of the *Prometheus* decision, and other judicial criticism of the process and rationale for the Commission's ownership rules, no revision should be made to existing ownership limits without further public input and scrutiny. This Further Notice of Proposed Rulemaking offers no specifics as to proposed rules, and provides no additional research to supplement or enhance the deeply flawed studies commissioned by the FCC in 2002.

59. Before any new rules are issued, the Commission should sponsor further independent study, provide the public with ample advance notice of proposed rule changes, allow for sufficient opportunity to analyze the impact of specific proposed rules, and solicit additional public comment.

VI. CONCLUSION.

60. AFTRA is unequivocally opposed to the elimination or relaxation of the remaining media ownership rules that are subject to this Notice. Each of these rules was created with a vision toward the future and a watchful eye on the past. The dissemination of fair and accurate information from diverse sources is a fundamental element in the foundation of our democracy. Our

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http://www.boston.com/ae/tv/articles/2006/10/10/fans_say_wild_sound_should_not_be_silenced/)

national identity has been formed by a rich cultural landscape of diverse art and entertainment, including broadcast entertainment. To deprive the public of diverse editorial perspectives in news, and varied music and entertainment programming in broadcasting is to deny the public access to critical tools to participate in our culture and our democracy. We urge the FCC to safeguard the trust that the public has bestowed upon it.

Respectfully submitted,

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